

LAW - The Palestinian  
Society for the Protection  
of Human Rights and the  
Environment

The Public  
Committee against  
Torture  
In Israel (PCATI)

The World  
Organisation  
Against Torture  
(OMCT)

**Comments on Torture and Other Ill-Treatment of Palestinians  
and Related Issues in the Second Periodic Report of the State of  
Israel Concerning the Implementation of the International  
Covenant on Civil and Political Rights<sup>1</sup>**

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<sup>1</sup> Consideration of reports submitted by States parties under article 40 of the Covenant, Second Periodic Report, Addendum: Israel, U.N. Doc. CCPR/C/ISR/2001/2, 4 December 2001.

## Introduction

These comments update and complement a detailed report presented by LAW, PCATI and OMCT to the Committee in October 2002,<sup>2</sup> in light of subsequent developments in Israel and the Occupied Palestinian Territories and the list of issues compiled by the Committee.<sup>3</sup> The comments will generally follow the Committee's list of issues.

In view of the different mandates of the three organisations presenting these comments, we will confine ourselves to certain issues pertaining to the treatment by the Israeli authorities of Palestinians from the Occupied Palestinian Territories, with a special emphasis on the rights of detainees, and on Article 7 of the Covenant.

### **Para. 1 of the Committee's list of issues – implementation of art. 2 of the Covenant:**

As far as we are aware, not a single GSS/ISA interrogator who has tortured or otherwise ill-treated Palestinian detainees has to date been criminally charged, let alone convicted – not only in the past three years, but in the past **thirteen**. This is partly due to the continued legality of torture (see below), partly to the thick veil of secrecy, which covers all interrogation procedures, and partly to the fact that all complaints of torture or other ill-treatment are in effect investigated internally, i.e. by a GSS/ISA agent.

Regarding soldiers and police officers, while in both cases there have been some prosecutions, it appears that there too the vast majority of perpetrators go unpunished, and investigations are few and inefficient.

### **Para. 2 – derogations from provisions of the Covenant:**

Whatever its declaratory position, Israel has in fact introduced both a *de jure* and a *de facto* derogation from its non-derogable obligations under art. 7. In its ruling of 1999,<sup>4</sup> the Supreme Court ruling prohibited *a priori* permission to torture, but nevertheless set a procedure whereby GSS/ISA agents who torture (apply “physical interrogation methods”) Palestinian detainees, in “instances of ‘ticking time bombs,’” are immune from criminal liability *ex post facto*, under the ‘defence of necessity.’ This procedure has been used in scores – perhaps hundreds - of cases, with impunity, as noted.

### **Para. 5 – House demolitions and other property destruction:**

LAW has documented 520 house demolitions in the West Bank (including 95 in East Jerusalem) between September 2000 and 20 February 2003<sup>5</sup>, and the Palestinian Center for Human Rights has documented 603 house demolitions in the Gaza Strip in the same

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<sup>2</sup> LAW, PCATI and OMCT, **Comments on Issues relating to Palestinian Detainees in the Third Periodic Report of the State of Israel Concerning the Implementation of the International Covenant on Civil and Political Rights**, September 2002.

<sup>3</sup> **List of issues to be taken up in connection with the consideration of the second periodic report of Israel** (CCPR/C/ISR/2001/2), adopted by the Human Rights Committee on 30 October 2002, CCPR/C/77/L/ISR, 27 November 2002.

<sup>4</sup> *HCJ 5100/94 The Public Committee Against Torture in Israel v. The Government of Israel et al.*, ruling of 6 September 1999.

<sup>5</sup> The figures do not include numbers of homes destroyed or damaged during military attacks or ‘military operations’ such as in Jenin refugee camp.

period. In addition to ‘administrative’ (‘lack of building permits’) demolitions, and ‘deterrent’ demolitions of homes of families of those alleged to be a security risk or to have carried out attacks on Israelis, LAW has documented indiscriminate destruction of or damage to residential homes and properties during military attacks (bombing, shelling and sniper shooting), and punitive demolitions carried out during “military” operations. For example, most homes in the al-Hawasheen quarter of the Jenin refugee camp were destroyed between 10-15 April 2002, after most of the fighting had ended by 10 April 2002. LAW has documented numerous cases of Palestinians being injured or killed during such attacks against homes, other properties and land. This, in addition to massive destruction of agricultural land by bulldozing and fire, uprooting of trees and killing of livestock: in October 2001, the UN Special Rapporteur to the Occupied Palestinian Territories reported that from September 2000, 285,808 fruit and olive trees had been uprooted, and wells and agricultural constructions destroyed<sup>6</sup>. The Palestinian Ministry of Agriculture reported that between 29 September 2000 and 30 June 2002<sup>7</sup>, a total of 670,285 trees were uprooted and destroyed and 50,247 dunums of agricultural land destroyed. LAW documented 54,783 animals killed between September 2000 and August 2002.

In 2001 the UN Committee Against Torture concluded that Israeli policies on closure<sup>8</sup> and house demolitions “may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment.”<sup>9</sup> The UN Special Rapporteur for the Occupied Palestinian Territories similarly stated, in 2002, that these measures in particular,

[O]ften appear so disproportionate, so remote from the interests of security, that one is led to ask whether they are not in part designed to punish, humiliate and subjugate the Palestinian people.<sup>10</sup>

In 1998, the European Court of Human Rights ruled, in *Selcuk and Asker v Turkey*,<sup>11</sup> that the destruction of the Applicants’ homes, in circumstances not dissimilar to those currently existing in the West Bank and Gaza Strip, amounted to inhuman treatment. Factors contributing to the suffering of families whose house is being demolished as a “deterrence” include the lack of prior notification, the forceful methods of destruction (in some cases leading to injury or death), the massive military presence during

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<sup>6</sup> Question of the violation of human rights in the Occupied Arab Territories, including Palestine – Report of the Special Rapporteur of the Commission on Human Rights, Mr. John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, U.N. Doc. A/56/440, 4 October 2001 and E/CN.4/2002/32, 6 March 2002.

<sup>7</sup> “Palestinian Agricultural Damage and Losses due to Israeli forces operations in the West Bank and the Gaza Strip”, July 2002, Ministry of Agriculture.

<sup>8</sup> For which see below, under Para. 14.

<sup>9</sup> Consideration of reports submitted by states parties under article 19 of the Convention, Israel, UN Committee Against Torture, U.N. Doc. CAT/C/XVII/Concl.5, 23 November 2001, paras. 6(i) and 6(j), respectively.

<sup>10</sup> Question of the violation of human rights in the occupied Arab territories, including Palestine: Report of the Special Rapporteur of the Commission on Human Rights, Mr. John Dugard, on the situation of human rights in the Palestinian Territories occupied by Israel since 1967, Addendum, 16 September 2002, U.N. Doc. A/57/366/Add. 1, para. 4.

<sup>11</sup> European Court of Human Rights, *Case of Selcuk and Asker v Turkey* (12/1997/796/998-999), judgment of 24 April 1998, paras. 79-80. See also, *Bilgin v Turkey* (Application no. 23819/94), judgment of 16 November 2000 paras. 97-104; and *Dulas v Turkey* (Application no. 25801/94), judgment of 30 January 2001, paras. 54-56.

demolitions and the fact that in many cases victims are left destitute. The destruction of civilian property during military attacks also involves stress and suffering (with some cases leading to deaths or injuries), including because of use of snipers, tanks, helicopter gunships and F-16 warplanes.

It should also be noted that ‘deterrent’ house demolitions are carried out against families of *suspects* rather than convicted criminals. In any case, demolitions involve no judicial procedures whatsoever against the inhabitants of the homes, who are innocent even under Israeli military law. This is a clear case of collective punishment, in violation of international humanitarian law and the Covenant, its prohibition being, as the Committee has noted, a peremptory norm of international law.<sup>12</sup>

### **Para. 6a – Administrative detentions:**

According to official Israeli sources, at the beginning of February 2003, 1107 Palestinians were held in administrative detention.<sup>13</sup> According to data collated by LAW there were around 1,800 administrative detainees on 24 February 2003.<sup>14</sup> In addition, two Lebanese citizens have now been held in Israel under administrative detention orders for eight and thirteen years, respectively. This measure, clearly used on a massive scale, may be renewed indefinitely,<sup>15</sup> or else used on and off at the authorities’ whim. For example, ‘Abed al-Ahmar, a human rights activist, has been detained without trial as follows: From February 1996 to May 1998; from May 2001 to May 2002; and from 22 November 2002 to the present.

Those held in administrative detention and ‘security’ detention in general are held in conditions amounting to ill treatment. Detainees and convicted Palestinians are housed in tents, some torn, infested with cockroaches, snakes, scorpions, and exposed to cold or hot weather. Tents are often overcrowded, with detainees sleeping on boards barely above the ground. Electricity and water supplies are cut off as forms of punishment, and detainees are often denied access to necessary medical treatment. Such ill treatment has recently led to rioting at Ofer and Ketsiot camps.

In his report dated 17 December 2002, the UN Special Rapporteur on torture called for countries to consider “abolishing, in accordance with relevant international standards, all forms of administrative detention.”<sup>16</sup>

### **Paras. 6b, 6c and 19 - Mass arrests for prolonged periods under Military Order No. 1500; access to lawyers and families:**

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<sup>12</sup> General Comment no. 29, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 11.

<sup>13</sup> This, out of a total of 4,815 Palestinians held in Israeli army and Israel Prison Service (IPS) facilities. Data provided by the IPS and the Israeli army to B’Tselem, the Israeli Information Center for Human Rights in the Occupied Territories (see: [www.btselem.org](http://www.btselem.org)). The data from the IPS is for 2 February, the data from the army is for 5 February 2003.

<sup>14</sup> According to LAW’s data, a total of about 8,500 Palestinians are held in Israeli army and IPS facilities.

<sup>15</sup> A single administrative detention order may extend for up to six months, then renewed indefinitely. See, for the West Bank, Administrative Detention Order (Temporary Provision) (Judea and Samaria) (No. 1229), 1988; for the Gaza Strip, Administrative Detention Order (Temporary Provision) (Gaza Strip) (No. 941), 1988.

<sup>16</sup> Report of the Special Rapporteur on the question of torture submitted in accordance with Commission resolution 2002/38, U.N. Doc. E/CN.4/2003/68, 17 December 2002, p. 11, para. 26(h),

In February 2003, Israel's Supreme Court ruled, in a case submitted by three Palestinians and seven human rights NGOs,<sup>17</sup> that the mass arbitrary arrest operations in 2002, during which all males between the ages of 14-55 were summoned and arrested, had been lawful, as each case was "an individual arrest."<sup>18</sup> The Court proclaimed that the periods of arrest before being brought before of a judge in the original order – 18 days – and subsequent ones (12 days in the current order, no. 1518) were excessive. It nevertheless upheld a previous order (no. 378) under which a Palestinian may be held for up to eight days before judicial review,<sup>19</sup> hinted that it would approve a period somewhere between 8-11 days, and allowed the current order to stand for another six months. Even in an emergency, this is a far cry from the Committee's position, to wit,

In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide **without delay** on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant.<sup>20</sup> [our emphasis].

The Court upheld the authorities' power to deny Palestinian detainees access to lawyers for the duration of the period before judicial review (and through additional orders, beyond it). The Court mentioned the Covenant as "making no explicit provision in this matter," disregarding the Committee's clear position on the subject:

The protection of the detainee also requires that **prompt and regular access** be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.<sup>21</sup> [our emphasis]

Detainees in general, and interrogees in particular, are also being denied access to their families. The result has been that hundreds of Palestinians, usually under GSS/ISA interrogation, are held incommunicado, a fact which both facilitates torture and ill-treatment and forms part of it. In his report of 17 December 2002, the UN Special Rapporteur on torture also called for incommunicado detention to be made illegal and those held under such detention to be released without delay, and recommended that legal provisions should ensure detainees are given access to legal counsel within 24 hours<sup>22</sup>.

### **Para. 7 – The Supreme Court ruling on GSS/ISA interrogations:**

Unfortunately, "measures incompatible with article 7 of the Covenant" are perfectly compatible with the Supreme Court ruling, as explained above. GSS/ISA interrogators hold detainees in incommunicado detention for weeks, exhaust them, inflict pain upon them, frighten and humiliate them. This is achieved through a combination of sleep deprivation in various forms; prolonged, painful shackling; slapping, hitting and kicking; exposure to extreme heat and cold; threats, curses and insults; and detention

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<sup>17</sup> *HCI 3239/02 Iyyad Ishaq Mahmud Mar'ab et al. v. Commander of IDF Forces in the Judea and Samaria Area et al.*, Ruling of 5 February 2003.

<sup>18</sup> *Ibid.*, para. 24.

<sup>19</sup> *Ibid.*, para. 29.

<sup>20</sup> General Comment no. 29, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 16.

<sup>21</sup> General Comment no. 20, U.N. Doc. HRI/GEN/1/Rev.1 (1994), para. 11.

<sup>22</sup> *Ibid.* 16. Refer to paragraph 26(g), pages 10-11.

under inhuman and degrading conditions. In addition, GSS/ISA interrogators have in several cases, possibly those defined as “ticking bombs,” used other methods, including forcing the detainee to squat in the “frog position” (“*qambaz*”), shackling him in contorted and extremely painful positions, shaking in various ways, applying painful pressure to various body parts and more.

LAW, PCATI and OMCT strongly urge the Committee to address, alongside the positive aspects of that ruling, the fact that *even under the Supreme Court ruling, it is still legal to torture in Israel, albeit in extreme circumstances ‘only’, and that such torture has in fact taken place in hundreds of cases.*

Moreover, it should be emphasised that Palestinian detainees are routinely brutalised and humiliated by soldiers and police. Unlike in the case of the GSS/ISA, perpetrators cannot hide under the cloak of legality, but nevertheless are not investigated, let alone tried or punished, in the vast majority of cases.

### **Para. 13 – human shields:**

A case, submitted by seven human rights NGOs in May 2002, is still pending before the Supreme Court.<sup>23</sup> On 21 January 2003, the Supreme Court revised an interim injunction it had issued in the matter, to allow the use of a new military procedure, termed “Operational Order - Advance Warning”. The procedure, issued in November 2002, ostensibly prohibits the use of Palestinians as human shields, but authorises military commanders to “convince” - though not force - Palestinians to go to homes where “wanted persons” are and call upon them to give themselves up.

Significantly, the order does not oblige commanders to inform the Palestinians of their right to refuse. At any rate, PCATI, LAW and OMCT consider it impossible for a civilian in such circumstances to be able to make anything resembling free choice. This latest version of the ‘allowable’ human shield, like its predecessors, is in blatant violation both of the Covenant – to the extent of amounting to torture, in view of the dangers and anxieties involved - and of international humanitarian law. Moreover, research by LAW and other NGOs since November 2002 has revealed that Palestinians have still been routinely threatened with use of force or held at gunpoint to check homes of ‘wanted persons’ and to examine ‘suspicious’ looking objects; and deliberately placed by soldiers as ‘shields’ during gunfights.<sup>24</sup>

### **Paras. 14, 1(a) and 1(c) – closures and curfews:**

Israel’s systematic policies of closures and curfews, constitute a breach of article 7, as well as articles 2 and 12 of the Covenant.<sup>25</sup>

Since September 2000, Israel’s long-standing policies of curfews and closures have intensified significantly. Total and partial closures have been imposed for most times in all cities and villages, with increased use of total closures since March 2002. Methods of closure include bans on any travel between the West Bank and Jerusalem

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<sup>23</sup> HCJ 3799/02 ‘*Adalah – the Legal Center for Arab Minority Rights in Israel et al. v. General Yitshak Eitan, Commander of Central Command et al.*

<sup>24</sup> See e.g. *ibid.*, **Response by Petitioners**, paras. 10-12.

<sup>25</sup> For more information on these issues see the written and oral submissions made by LAW to the Committee in October 2002 regarding movement restrictions.

and between the West Bank and Gaza; more restrictive use of permits; permanent and mobile military checkpoints (about 140 in the West Bank and 30 in Gaza), where Palestinians often suffer humiliation at the hands of Israeli soldiers; 200 unstaffed roadblocks; dirt walls; earth mounds; concrete blocks; iron gates; trenches dug around villages and towns; and 8 new commercial checkpoints used for re-loading of commercial goods on to different trucks. The World Bank reported in February 2003<sup>26</sup>, that since March 2002 the curfew regime has kept at times up to 900,000 Palestinians in their homes 24 hours a day.

Closures and curfews have had a cumulative effect on Palestinians in the Occupied Palestinian Territories, each of whom has individually suffered or been humiliated in a myriad of ways, in particular with the detrimental impact on the economy, work, education, health care, and denial of access to food, water, medical and other humanitarian aid. The acute economic losses and sharp increases in rates of poverty (from 21% in September 2000 to more than 60% by February 2003) and unemployment (from 11% in September 2000 to 53% by February 2003) caused by curfews and closures have greatly added to the suffering.<sup>27</sup> The World Bank reports<sup>28</sup> as at February 2003 that since September 2000, the economy has halved, total income losses amount to US\$5.4 billion, the Gross National Income has decreased by 48% in the same period, that agricultural losses amount to US\$704 million, and raw physical damages amount to US\$728 million. The World Bank also refers to the resulting humanitarian crisis since September 2000, for example with average food consumption dropped by 25-30%, an increase of dependence on humanitarian agencies (the Palestinian Central Bureau of Statistics reports that 81.2% of the population rely on such agencies<sup>29</sup>), and worsening health standards (e.g. with 22.5% of under 5 year olds suffering from acute or chronic malnutrition).

The nature of the restrictions, their timing and indiscriminate nature, the fact they do not apply to Jewish Israeli citizens, as well as their destructive consequences also indicate that these movement restrictions constitute a form of collective punishment of the wider Palestinian population in the Occupied Palestinian Territories. In this regard, the conclusions of the U.N. Committee Against Torture and the U.N. Special Rapporteur apply equally to closures and curfews, as do the Committee's comment on collective punishments, all cited above.

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<sup>26</sup> 'Two years of Intifada, closures and Palestinian Economic Crisis – An Assessment', The World Bank, 14 February 2003.

<sup>27</sup> Closures and curfews deprive individuals of their very means of subsistence and livelihood. In *Selcuk and Asker*, the ECHR found this element to be an essential factor in concluding occurrence of ill treatment, see para. 77.

<sup>28</sup> Ibid 20.

<sup>29</sup> Refer to the PCBS report: "Impact of the Israeli measures on the economic conditions of Palestinian households on the Eve of Israeli Incursion", 4<sup>th</sup> Round, January-February 2002, page 5; available at [www.pcbs.org](http://www.pcbs.org).